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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/723,508 | 11/28/2000 | Glen T. Anderson | sc37u-us | 4904 |
| 7590 | 01/12/2006 | | EXAMINER | |
| Rupa Sen Avon Products Inc Avon Place Suffern, NY 10901 | | | YU, GINA C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1617 | |

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/723,508

Applicant(s)

ANDERSON, GLEN T.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-13, 15-20, 22, 24, 25 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-13, 15-20, 22, 24, 25, and 30-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of amendment filed on October 11, 2005. Claims 7-13, 15-20, 22, 24, 25, and 30-35 are pending. Claim rejections made under 35 U.S.C. § 103 (a) as indicated in the previous Office action dated April 11, 2005 are withdrawn and modified to address the claim amendments made by applicants. The substance of the obviousness rejections has been maintained.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-13, 15-20, 22, 24, 25, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al. (US 6258345 B1) in view of Manufacturing Chemist (Black Helps Hide Lines, June 1, 1999) and Anselmann (SPC Soap, Perfumery, and Cosmetics).

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical organic polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. The reference teaches using the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition. See col. 3, lines 46 – 58; instant claims 11-13. The recited weight amount of the crosslinked silicone elastomer is within this range. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention

in claims 18-20 are described in Examples. The reference teaches formulating the invention in the form of emulsion and creams. See col. 3, lines 58 – 67.

The reference also fails to teach the inorganic spherical particles recited in Claim 7.

Manufacturing Chemist teaches that Ronasphere LDP from Merck, a cosmetic filler pigment comprising sphere silica coated with titanium dioxide and iron oxide, provides optical reduction of fine lines and the effect of making the skin appear smoother, more even and more natural looking. See Full Text. The particle size of the Ronasphere LDP pigments are less than 25 microns, and particle distribution of 4-7 microns. See Merck technical data. See the ratio limitation of instant claim 7.

Anselmann teaches that Ronasphere LDP can be used in the amount of 1-10 % in a cosmetic formulation. See p. 4, last par. See instant claims 12 and 13.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquet by incorporating the spherical silica as motivated by Manufacturing Chemist and Anselmann because the latter teaches that the spherical silica Ronasphere LDP provides optical reduction of fine lines and the effect of making the skin appear smooth, more even and natural looking. The skilled artisan would have had a reasonable expectation of successfully producing a cosmetic composition which provide wrinkle coverage because both Rouquet and Manufacturing Chemist teach emulsion cosmetic compositions.

Claims 7-13, 15-22, 24, 25, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al. (US 6258345 B1) in view of LaFleur et al. (US 5658579) ("LaFleur").

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. Employing each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition, is disclosed in col. 3, lines 46 – 58, which meets instant claims 11-13. The recited weight amount of the crosslinked silicone elastomer is within this range. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples.

Rouquet fails to teach the inorganic spherical particles recited in Claim 7.

LaFleur teaches powder compositions comprising combination of talc having specified particle size distribution. See col. 2, lines 10 – 34. The reference teaches that the talc therein comprises particles having a particle size distribution of 10 microns or less; 15 microns or less; and 20 microns or less. See instant claims 3-5, 9, 10, 24-28. The reference teaches that the invention provides improved coverage, uniformity, and natural look, which are attributed by the particle size distribution of talc. See col. 3, lines 1 – 64. As for claims 1 and 7, examiner takes the position that the prior art renders the claimed particle size distribution of 24 obvious. Based on the prior art teaching that a particle size distribution of 20 microns or less renders the said benefits, it would have

been obvious to a routineer to discover a workable particle size distribution by routine experimentation. While the reference teaches using talc of different size distribution, the reference teaches, "some of the more frequently used components include from about 1 % to about 10 % fillers and powders other than talc, including. . . treated and untreated mica . . . and silica". See col. 6, lines 26 – 34. Thus, the functional equivalency of talc with mica or silica is suggested. Examiner views that substituting prior art talc with mica pigments having different size distribution would have been obvious to one of ordinary skill in the art because the skilled artisan would have had a reasonable expectation that mica would be a functional equivalent to talc.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquet by adding mica pigments with different size distribution as motivated by LaFleur because of the expectation of successfully producing cosmetic compositions that provide improved coverage, uniformity, and natural look to the skin.

Response to Arguments

Applicant's arguments filed October 11, 2005 have been fully considered but they are not persuasive.

With respect to the rejection made over Rouquet in view of Manufacturing Chemist and Anselmann, applicants assert Ronasphere LDP is not a spherical silicone particle as required by the present invention but a pigment particle comprised of a coating of titanium dioxide and iron oxide on a silica core. Examiner reiterates that the outstanding rejection is based on the ground that it would be obvious to combine

Ronasphere LDP with the elastomeric organopolysiloxane. The issue of substituting Ronasphere LDP for the elastomeric organopolysiloxane particle has not been raised by the examiner. Claim 7 merely requires, in addition to crosslinked silicone elastomer, inorganic spherical particles with the particle size in the weight amount as recited. Ronasphere LDP is spherical particles which meet the limitation and useful for the cosmetic benefits as specifically taught by the reference.

With respect to the rejection made over Rouquet in view of LaFleur, applicants assert that there is no reason to "replace the organic polymeric spherical particles of Rouquet with the flaky, plate-like talc particles of LaFleur". Examiner finds that the argument is not directly responsive to the rejection made. It is respectfully points out that the rejection here is made on the ground that i) a skilled artisan would have been motivated to use mica in place of talc, as LaFleur teaches the functional equivalency of the two in making cosmetic composition; and ii) the same person would have been motivated to combine the elastomeric organopolysiloxane of Rouquet with the mica particles of LaFleur in order to obtain the cosmetic benefits that are taught in the references.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

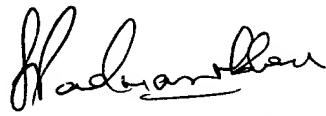
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu
Patent Examiner



GREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER